

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-cr-20767

v.

Honorable Thomas L. Ludington  
Magistrate Judge Patricia T. Morris

TYRONE QUENTIN JOHNSON,

Defendant.

---

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING  
PLAINTIFF'S MOTION TO VACATE SENTENCE UNDER 28 U.S.C. § 2255**

On May 2, 2013, Defendant Tyrone Quentin Johnson was sentenced to 270 months after being convicted of five counts related to the possession and distribution of heroin. ECF No. 58. After appealing his conviction, Johnson filed a motion to vacate his sentence under 28 U.S.C. § 2255. ECF No. 72. In that motion, Johnson argued that his federal counsel was ineffective. He also argued that the Court gave an improper jury instruction. On August 17, 2016, Magistrate Judge Patricia T. Morris issued a report recommending that Johnson's motion to vacate his sentence be denied. ECF No. 86. Judge Morris found that there was no evidence that the federal prosecutors were involved in his state plea negotiations, which invalidated Johnson's claims alleging ineffective assistance of counsel. Judge Morris also found that Johnson's improper jury instruction argument was premised on a misunderstanding of the underlying statute.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record.

*Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Before the petitioner may appeal this Court's dispositive decision, a certificate of appealability must be issued. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R.App. P. 22(b). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When a court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner's claims. *Id.* at 336-37. "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. § 2254.

Having considered the matter, the Court concludes that the petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted in this case.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 86, is **ADOPTED**.

It is further **ORDERED** that Defendant Johnson's motion to vacate, ECF No. 72, is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**.

Dated: October 4, 2016

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 4, 2016.

s/Kelly Winslow for  
MICHAEL A. SIAN, Case Manager